

SUBCHAPTER B—COPYRIGHT ARBITRATION ROYALTY PANEL RULES AND PROCEDURES

EDITORIAL NOTE: For nomenclature changes to subchapter B, see 58 FR 67691, Dec. 22, 1993, 59 FR 23993, 23994, and 23995, May 9, 1994, as corrected at 59 FR 33201 and 33202, June 28, 1994.

PART 251—COPYRIGHT ARBITRATION ROYALTY PANEL RULES OF PROCEDURE

Subpart A—Organization

Sec.

- 251.1 Official addresses.
- 251.2 Purpose of Copyright Arbitration Royalty Panels.
- 251.3 Arbitrator lists.
- 251.4 Arbitrator lists: Objections.
- 251.5 Qualifications of the arbitrators.
- 251.6 Composition and selection of Copyright Arbitration Royalty Panels.
- 251.7 Actions of Copyright Arbitration Royalty Panels.
- 251.8 Suspension of proceedings.

Subpart B—Public Access to Copyright Arbitration Royalty Panel Meetings

- 251.11 Open meetings.
- 251.12 Conduct of open meetings.
- 251.13 Closed meetings.
- 251.14 Procedure for closed meetings.
- 251.15 Transcripts of closed meetings.
- 251.16 Requests to open or close meetings.

Subpart C—Public Access to and Inspection of Records

- 251.21 Public records.
- 251.22 Public access.
- 251.23 FOIA and Privacy Act.

Subpart D—Standards of Conduct

- 251.30 Basic obligations of arbitrators.
- 251.31 Financial interests.
- 251.32 Financial disclosure statement.
- 251.33 Ex parte communications.
- 251.34 Gifts and other things of monetary value.
- 251.35 Outside employment and other activities.
- 251.36 Pre-arbitration and post-arbitration employment restrictions.
- 251.37 Use of nonpublic information.
- 251.38 Billing and commitment to standards.
- 251.39 Remedies.

Subpart E—Procedures of Copyright Arbitration Royalty Panels

- 251.40 Scope.
- 251.41 Formal hearings.
- 251.42 Suspension or waiver of rules.
- 251.43 Written cases.
- 251.44 Filing and service of written cases and pleadings.
- 251.45 Discovery and prehearing motions.
- 251.46 Conduct of hearings: Role of arbitrators.
- 251.47 Conduct of hearings: Witnesses and counsel.
- 251.48 Rules of evidence.
- 251.49 Transcript and record.
- 251.50 Rulings and orders.
- 251.51 Closing the record.
- 251.52 Proposed findings and conclusions.
- 251.53 Report to the Librarian of Congress.
- 251.54 Assessment of costs of arbitration panels.
- 251.55 Post-panel motions.
- 251.56 Order of the Librarian of Congress.
- 251.57 Effective date of order.
- 251.58 Judicial review.

Subpart F—Rate Adjustment Proceedings

- 251.60 Scope.
- 251.61 Commencement of adjustment proceedings.
- 251.62 Content of petition.
- 251.63 Consideration of petition; settlements.
- 251.64 Disposition of petition; initiation of arbitration proceeding.
- 251.65 Deduction of costs of rate adjustment proceedings.

Subpart G—Royalty Fee Distribution Proceedings

- 251.70 Scope.
- 251.71 Commencement of proceedings.
- 251.72 Declaration of controversy: Initiation of arbitration proceeding.
- 251.73 Deduction of costs of distribution proceedings.

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Subpart A—Organization

§251.1 Official addresses.

Claims, pleadings, and general correspondence should be addressed to:

Copyright Arbitration Royalty Panel (CARP), P.O. Box 70977, Southwest Station, Washington, DC 20024

or, hand-delivered to:

Office of the Copyright General Counsel, Room 403, James Madison Building, 101 Independence Avenue, S.E., Washington, DC 20540

[61 FR 63717, Dec. 2, 1996]

§251.2 Purpose of Copyright Arbitration Royalty Panels.

The Librarian of Congress, upon the recommendation of the Register of Copyrights, may appoint and convene a Copyright Arbitration Royalty Panel (CARP) for the following purposes:

(a) To make determinations concerning royalty rates for the cable compulsory license, 17 U.S.C. 111;

(b) To make determinations concerning royalty rates and terms for the subscription digital audio transmissions compulsory license, 17 U.S.C. 114;

(c) To make determinations concerning royalty rates for making and distributing phonorecords, and royalty rates and terms for digital transmissions that constitute digital phonorecord deliveries, 17 U.S.C. 115;

(d) To make determinations concerning royalty rates for coin-operated phonorecord players (jukeboxes) whenever a negotiated license expires or is terminated and is not replaced by another such license agreement, 17 U.S.C. 116;

(e) To make determinations concerning royalty rates and terms for the use by noncommercial educational broadcast stations for certain copyrighted works, 17 U.S.C. 118;

(f) To make determinations concerning royalty rates for the satellite carrier compulsory license, 17 U.S.C. 119; and

(g) To make determinations concerning the distribution of cable and satellite carrier royalty fees and digital audio recording devices and media payments deposited with the Register of Copyrights, 17 U.S.C. 111, 119, and chapter 10, respectively.

[61 FR 37215, July 17, 1996]

§251.3 Arbitrator lists.

(a) Any professional arbitration association or organization may submit be-

fore January 1, 1988, and every two years thereafter, a list of persons qualified to serve as arbitrators on a Copyright Arbitration Royalty Panel. The list shall contain the following for each person:

(1) The full name, address, and telephone number of the person.

(2) The current position and name of the person's employer, if any, along with a brief summary of the person's employment history, including areas of expertise, and, if available, a description of the general nature of clients represented and the types of proceedings in which the person represented clients.

(3) A brief description of the educational background of the person, including teaching positions and membership in professional associations, if any.

(4) A statement of the facts and information which qualify the person to serve as an arbitrator under §251.5.

(5) A description or schedule detailing fees proposed to be charged by the person for service on a CARP.

(6) Any other information which the professional arbitration association or organization may consider relevant.

(b) After January 1, 1988, and every two years thereafter, the Librarian of Congress shall publish in the FEDERAL REGISTER a list of at least 30, but not more than 75 persons, submitted to the Librarian from at least three professional arbitration associations or organizations. The persons so listed must satisfy the qualifications and requirements of this subchapter and can reasonably be expected to be available to serve as arbitrators on a Copyright Arbitration Royalty Panel during that calendar year. This list will constitute the "arbitrator list" referred to in this subchapter. With respect to persons on the arbitrator list, the Librarian will make available for copying and inspection the information provided under paragraph (a) of this section.

[59 FR 23981, May 9, 1994, as amended at 59 FR 63040, Dec. 7, 1994; 61 FR 63717, Dec. 2, 1996]

§251.4 Arbitrator lists: Objections.

(a) In the case of a rate adjustment proceeding, any party to a proceeding may, during the 45-day period specified in §251.45(b)(2)(i), file an objection with

the Librarian of Congress to one or more of the persons contained on the arbitrator list for that proceeding. Such objection shall plainly state the grounds and reasons for each person claimed to be objectionable.

(b) In the case of a royalty distribution proceeding, any party to the proceeding may, during the 45-day period specified in § 251.45(b)(1)(i), file an objection with the Librarian of Congress to one or more of the persons contained on the arbitrator list for the proceeding. Such objection shall plainly state the grounds and reasons for each person claimed to be objectionable.

[59 FR 23981, May 9, 1994, as amended at 59 63040, Dec. 7, 1994]

§ 251.5 Qualifications of the arbitrators.

In order to serve as an arbitrator to a Copyright Arbitration Royalty Panel, a person must, at a minimum, have the following qualifications:

(a) Admitted to the practice of law in any state, territory, trust territory, or possession of the United States.

(b) Ten or more years of legal practice.

(c) Experience in conducting arbitration proceedings and facilitating the resolution and settlement of disputes.

[59 FR 23981, May 9, 1994, as amended at 61 FR 63717, Dec. 2, 1996]

§ 251.6 Composition and selection of Copyright Arbitration Royalty Panels.

(a) Within ten days after publication of a notice in the FEDERAL REGISTER initiating arbitration proceedings under this subchapter, the Librarian of Congress will, upon recommendation of the Register of Copyrights, select two arbitrators from the arbitrator list for that calendar year.

(b) The two arbitrators so selected shall, within 10 days of their selection, choose a third arbitrator from the same arbitrator list. The third arbitrator shall serve as the chairperson of the panel during the course of the proceedings.

(c) If the two arbitrators fail to agree upon the selection of the third, the Librarian will promptly select the third arbitrator from the same arbitrator list.

(d) The third arbitrator so chosen shall serve as the chairperson of the panel during the course of the proceeding. In all matters, procedural or substantive, the chairperson shall act according to the majority wishes of the panel.

(e) Two arbitrators shall constitute a quorum necessary to the determination of any proceeding.

(f) If, before the commencement of hearings in a proceeding, one or more of the arbitrators is unable to continue service on the CARP, the Librarian will suspend the proceeding as provided by § 251.8, and will inaugurate a procedure to bring the CARP up to the full complement of three arbitrators. Where one or two vacancies exist, and either or both of the vacant seats were previously occupied by arbitrators selected by the Librarian, the Librarian will select the necessary replacements from the current arbitrator list. If there is one vacancy, and it was previously occupied by the chairperson, the two remaining arbitrators shall select the replacement from the arbitrator list, and the person chosen shall serve as chairperson. If there are two vacant seats, and one of them was previously occupied by the chairperson, the Librarian will select one replacement from the arbitrator list, and that person shall join with the remaining arbitrator to choose the replacement, who shall serve as chairperson.

(g) After hearings have commenced, the Librarian will not suspend the proceedings or inaugurate a replacement procedure unless it is necessary in order for the CARP to have a quorum. If the hearing is underway and two arbitrators are unable to continue service, or if the hearing had been proceeding with two arbitrators and one of them is no longer able to serve, the Librarian will suspend the proceedings under § 251.8 and seek the unanimous written agreement of the parties to the proceeding for the Librarian to select a replacement. In the absence of such an agreement, the Librarian will terminate the proceeding. If such agreement is obtained, the Librarian will select one arbitrator from the arbitrator list.

(h) If, after hearings have commenced, the chairperson of the CARP

is no longer able to serve, the Librarian will ask the two remaining arbitrators, or the one remaining arbitrator and the newly-selected arbitrator, to agree between themselves which of them will serve as chairperson. In the absence of such an agreement, the Librarian will terminate the proceeding.

§251.7 Actions of Copyright Arbitration Royalty Panels.

Any action of a Copyright Arbitration Royalty Panel requiring publication in the FEDERAL REGISTER according to 17 U.S.C. or the rules and regulations of this subchapter shall be published under the authority of the Librarian of Congress and the Register of Copyrights. Under no circumstances shall a CARP engage in rulemaking designed to amend, supplement, or supersede any of the rules and regulations of this subchapter, or seek to have any such action published in the FEDERAL REGISTER.

§251.8 Suspension of proceedings.

(a) Where it becomes necessary to replace a selected arbitrator under §251.6 or to remove and replace a selected arbitrator under subpart D of this part, the Librarian will order a suspension of any ongoing hearing or other proceeding by notice in writing to all parties. Immediately after issuing the order of suspension, and without delay, the Librarian will take the necessary steps to replace the arbitrator or arbitrators, and upon such replacement will issue an order, by notice in writing to all parties, resuming the proceeding from the time and point at which it was suspended.

(b) Where, for any other reason, such as a serious medical or family emergency affecting an arbitrator, the Librarian considers a suspension of a proceeding necessary and fully justified, he may, with the unanimous written consent of all parties to the proceeding, order a suspension of the proceeding for a stated period not to exceed one month.

(c) Any suspension under this section shall result in a complete cessation of all aspects of the proceeding, including the running of any period provided by statute for the completion of the proceeding.

Subpart B—Public Access to Copyright Arbitration Royalty Panel Meetings

§251.11 Open meetings.

(a) All meetings of a Copyright Arbitration Royalty Panel shall be open to the public, with the exception of meetings that are listed in §251.13.

(b) At the beginning of each proceeding, the CARP shall develop the original schedule of the proceeding which shall be published in the FEDERAL REGISTER at least seven calendar days in advance of the first meeting. Such announcement shall state the times, dates, and place of the meetings, the testimony to be heard, whether any of the meetings, or any portion of a meeting, is to be closed, and, if so, which ones, and the name and telephone number of the person to contact for further information.

(c) If changes are made to the original schedule, they will be announced in open meeting and issued as orders to the parties participating in the proceeding, and the changes will be noted in the docket file of the proceeding. In addition, the contact person for the proceeding shall make any additional efforts to publicize the change as are practicable.

(d) If it is decided that the publication of the original schedule must be made on shorter notice than seven days, that decision must be made by a recorded vote of the panel and included in the announcement.

[59 FR 23981, May 9, 1994, as amended at 59 FR 63040, Dec. 7, 1994]

§251.12 Conduct of open meetings.

Meetings of a Copyright Arbitration Royalty Panel will be conducted in a manner to ensure the greatest degree of openness possible. Reasonable access for the public will be provided at all public sessions. Any person may take photographs, and make audio or video recordings of the proceedings, so long as the panel is informed in advance. The chairperson has the discretion to regulate the time, place, and manner of the taking of photographs or the audio or video recording of the proceedings to ensure the order and decorum of the proceedings. The right of the public to

be present does not include the right to participate or make comments.

§ 251.13 Closed meetings.

In the following circumstances, a Copyright Arbitration Royalty Panel may close meetings, or any portion of a meeting, or withhold information from the public:

(a) If the matter to be discussed has been specifically authorized to be kept secret by Executive Order, in the interests of national defense or foreign policy; or

(b) If the matter relates solely to the internal practices of a Copyright Arbitration Royalty Panel; or

(c) If the matter has been specifically exempted from disclosure by statute (other than 5 U.S.C. 552) and there is no discretion on the issue; or

(d) If the matter involves privileged or confidential trade secrets or financial information; or

(e) If the result might be to accuse any person of a crime or formally censure him or her; or

(f) If there would be a clearly unwarranted invasion of personal privacy; or

(g) If there would be disclosure of investigatory records compiled for law enforcement, or information that if written would be contained in such records, and to the extent disclosure would:

(1) Interfere with enforcement proceedings; or

(2) Deprive a person of the right to a fair trial or impartial adjudication; or

(3) Constitute an unwarranted invasion of personal privacy; or

(4) Disclose the identity of a confidential source or, in the case of a criminal investigation or a national security intelligence investigation, disclose confidential information furnished only by a confidential source; or

(5) Disclose investigative techniques and procedures; or

(6) Endanger the life or safety of law enforcement personnel.

(h) If premature disclosure of the information would frustrate a Copyright Arbitration Royalty Panel's action, unless the panel has already disclosed the concept or nature of the proposed action, or is required by law to make disclosure before taking final action; or

(i) If the matter concerns a CARP's participation in a civil action or proceeding or in an action in a foreign court or international tribunal, or an arbitration, or a particular case of formal agency adjudication pursuant to 5 U.S.C. 554, or otherwise involving a determination on the record after opportunity for a hearing; or

(j) If a motion or objection has been raised in an open meeting and the panel determines that it is in the best interests of the proceeding to deliberate on such motion or objection in closed session.

[59 FR 23981, May 9, 1994, as amended at 59 FR 63040, Dec. 7, 1994; 60 FR 8197, Feb. 13, 1995]

§ 251.14 Procedure for closed meetings.

(a) Meetings may be closed, or information withheld from the public, only by a recorded vote of a majority of arbitrators of a Copyright Arbitration Royalty Panel. Each question, either to close a meeting or to withhold information, must be voted on separately, unless a series of meetings is involved, in which case the CARP may vote to keep the discussions closed for 30 days, starting from the first meetings. If the CARP feels that information about a closed meeting must be withheld, the decision to do so must also be the subject of a recorded vote.

(b) Before a discussion to close a meeting or withhold information, the chairperson of a CARP must certify that such an action is permissible, and the chairperson shall cite the appropriate exemption under § 251.13. This certification shall be included in the announcement of the meeting and be maintained as part of the record of proceedings of that CARP.

(c) Following such a vote, the following information shall be published in the FEDERAL REGISTER as soon as possible:

(1) The vote of each arbitrator; and

(2) The appropriate exemption under § 251.13; and

(3) A list of all persons expected to attend the meeting and their affiliation.

(d) The procedure for closed meetings in this section and in § 251.15 shall not apply to the internal deliberations of arbitrators carried out in furtherance

Copyright Office, Library of Congress

§ 251.21

of their duties and obligations under this chapter.

[59 FR 23981, May 9, 1994, as amended at 59 63040, Dec. 7, 1994]

§251.15 Transcripts of closed meetings.

(a) All meetings closed to the public shall be subject either to a complete transcript or, in the case of §251.13(h) and at the discretion of the Copyright Arbitration Royalty Panel, detailed minutes. Detailed minutes shall describe all matters discussed, identify all documents considered, summarize action taken as well as the reasons for it, and record all roll call votes as well as any views expressed.

(b) Such transcripts or minutes shall be kept by the Copyright Office for at least two years, or for at least one year after the conclusion of the proceedings, whichever is later. Any portion of transcripts of meetings which the chairperson of a CARP does not feel is exempt from disclosure under §251.13 will ordinarily be available to the public within 20 working days of the meeting. Transcripts or minutes of closed meetings will be reviewed by the chairperson at the end of the proceedings of the panel and, if at that time the chairperson determines that they should be disclosed, he or she will resubmit the question to the CARP to gain authorization for their disclosure.

§251.16 Requests to open or close meetings.

(a) Any person may request a Copyright Arbitration Royalty Panel to open or close a meeting or disclose or withhold information. Such request must be captioned "Request to Open" or "Request to Close" a meeting on a specified date concerning a specific subject. The person making the request must state his or her reasons, and include his or her name, address, and telephone number.

(b) In the case of a request to open a meeting that a CARP has previously voted closed, the panel must receive the request within 3 working days of the meeting's announcement. Otherwise the request will not be heeded, and the person making the request will be so notified. An original and three

copies of the request must be submitted.

(c) For a CARP to act on a request to open or close a meeting, the question must be brought to a vote before the panel. If the request is granted, an amended meeting announcement will be issued and the person making the request notified. If a vote is not taken, or if after a vote the request is denied, said person will also be notified promptly.

Subpart C—Public Access to and Inspection of Records

§251.21 Public records.

(a) All official determinations of a Copyright Arbitration Royalty Panel will be published in the FEDERAL REGISTER in accordance with §251.7 and include the relevant facts and reasons for those determinations.

(b) All records of a CARP, and all records of the Librarian of Congress assembled and/or created under 17 U.S.C. 801 and 802, are available for inspection and copying at the address provided in §251.1 with the exception of:

(1) Records that relate solely to the internal personnel rules and practices of the Copyright Office or the Library of Congress;

(2) Records exempted by statute from disclosure;

(3) Interoffice memoranda or correspondence not available by law except to a party in litigation with a CARP, the Copyright Office, or the Library of Congress;

(4) Personnel, medical, or similar files whose disclosure would be an invasion of personal privacy;

(5) Communications among arbitrators of a CARP concerning the drafting of decisions, opinions, reports, and findings on any CARP matter or proceeding;

(6) Communications among the Librarian of Congress and staff of the Copyright Office or Library of Congress concerning decisions, opinions, reports, selection of arbitrators, or findings on any matter or proceeding conducted under 17 U.S.C. chapter 8;

(7) Offers of settlement that have not been accepted, unless they have been made public by the offeror;

(8) Records not herein listed but which may be withheld as “exempted” if a CARP or the Librarian of Congress finds compelling reasons for such action.

§ 251.22 Public access.

(a) *Location of records.* All of the following records relating to rate adjustment and distribution proceedings under this subchapter shall be maintained at the Copyright Office:

(1) Records required to be filed with the Copyright Office; or

(2) Records submitted to or produced by the Copyright Office or Library of Congress under 17 U.S.C. 801 and 802, or

(3) Records submitted to or produced by a Copyright Arbitration Royalty Panel during the course of a concluded proceeding. In the case of records submitted to or produced by a CARP that is currently conducting a proceeding, such records shall be maintained by the chairperson of that panel at the location of the hearing or at a location specified by the panel. Upon conclusion of the proceeding, all records shall be delivered by the chairperson to the Copyright Office.

(b) *Requesting information.* Requests for information or access to records described in § 251.21 shall be directed to the Copyright Office at the address listed in § 251.1. No requests shall be directed to or accepted by a Copyright Arbitration Royalty Panel. In the case of records in the possession of a CARP, the Copyright Office shall make arrangements with the panel for access and copying by the person making the request.

(c) *Fees.* Fees for photocopies of CARP or Copyright Office records are the applicable Office charge. Fees for searching for records, certification of documents, and other costs incurred are as provided in 17 U.S.C. 705, 708.

[59 FR 23981, May 9, 1994, as amended at 59 FR 63040, Dec. 7, 1994]

§ 251.23 FOIA and Privacy Act.

Freedom of Information Act and Privacy Act provisions applicable to CARP proceedings can be found in parts 203 and 204 of subchapter A of this chapter.

Subpart D—Standards of Conduct

§ 251.30 Basic obligations of arbitrators.

(a) *Definitions.* For purposes of these regulations, the following terms shall have the meanings given in this subsection:

(1) A “selected arbitrator” is a person named by the Librarian of Congress, or by other selected arbitrators, for service on a particular CARP panel, in accordance with § 251.6 of these regulations;

(2) A “listed arbitrator” is a person named in the “arbitration list” published in accordance with § 251.3 of these regulations.

(b) *General principles applicable to arbitrators.* Selected arbitrators are persons acting on behalf of the United States, and the following general principles apply to them. Where a situation is not covered by standards set forth specifically in this subpart, selected arbitrators shall apply these general principles in all cases in determining whether their conduct is proper. Listed arbitrators shall apply these principles where applicable.

(1) Arbitrators are engaged in a matter of trust that requires them to place ethical and legal principles above private gain.

(2) Arbitrators shall not hold financial interests that conflict with the conscientious performance of their service.

(3) Arbitrators shall not engage in financial transactions using nonpublic information or allow the improper use of such information to further any private interest.

(4) Selected arbitrators shall not solicit or accept any gift or other item of monetary value from any person or entity whose interests may be affected by the arbitrators’ decisions. Listed arbitrators may accept gifts of nominal value or gifts from friends and family as specified in § 251.34(b).

(5) Arbitrators shall put forth their honest efforts in the performance of their service.

(6) Arbitrators shall act impartially and not give preferential treatment to any individual, organization, or entity whose interests may be affected by the arbitrators’ decisions.

(7) Arbitrators shall not engage in outside employment or activities, including seeking or negotiating for employment, that conflicts with the performance of their service.

(8) Arbitrators shall endeavor to avoid any actions creating the appearance that they are violating the law or the ethical standards set forth in this subpart.

(9) Arbitrators shall maintain order and decorum in the proceedings, be patient, dignified, and courteous to the parties, witnesses, and their representatives, and dispose promptly the business before them.

§ 251.31 Financial interests.

(a) No selected arbitrator shall have a direct or indirect financial interest—

(1) In the case of a distribution proceeding, in any claimant to the proceeding whether or not in a voluntary settlement agreement, or any copyright owner who receives royalties from such claimants because of their representation;

(2) In the case of a rate adjustment proceeding, in any individual, organization or entity that would be affected by the outcome of the proceeding.

(b) “Direct or indirect financial interest” shall include: Being employed by, being a consultant to, being a representative or agent for, being a member or affiliate of, being a partner of, holding any office in, owning any stocks, bonds, or other securities, or deriving any income from the prohibited entity.

(c) “Direct or indirect financial interest” shall not include—

(1) Owning shares in any stock or bond mutual fund or blind trust which might have an interest in a prohibited entity but whose decisions to invest or sell is not under the control of the selected arbitrator, or

(2) Receiving any post-employment benefit such as health insurance or a pension so long as the benefit would not be affected by the outcome of the proceeding.

(d) For the purposes of this section, the financial interests of the following persons will serve to disqualify the selected arbitrator to the same extent as if they were the arbitrator’s own interests:

(1) The arbitrator’s spouse;

(2) The arbitrator’s minor child;

(3) The arbitrator’s general partner, except that the personal financial holdings, including stock and bond investments, of such partner will not serve to disqualify the selected arbitrator; or

(4) An organization or entity for which the arbitrator serves as officer, director, trustee, general partner or employee.

[59 FR 23981, May 9, 1994, as amended at 59 FR 63040, Dec. 7, 1994]

§ 251.32 Financial disclosure statement.

(a) Within 45 days of their nomination, each nominated arbitrator shall file with the Librarian of Congress a confidential financial disclosure statement as provided by the Library of Congress, which statement shall be reviewed by the Librarian and designated Library staff to determine what conflicts of interest, if any, exist according to § 251.31.

(b) If any conflicts do exist, the Librarian shall not choose that person for the proceeding for which he or she has the financial conflict, except—

(1) The listed arbitrator may divest himself or herself of the interest that caused the disqualification, and become qualified to serve; or

(2) The listed arbitrator may offer to disclose on the record the conflict of interest causing disqualification. In such instances:

(i) The Librarian shall publish a list detailing the conflicts of interest the listed arbitrators have offered to disclose, and any other matters which, although outside of the scope of the restrictions of § 251.31, nevertheless, in the view of the Librarian, raise sufficient concerns to warrant disclosure to the affected parties;

(ii) Such list shall be included in an order issued no later than the commencement of the 45-day precontroversy discovery period;

(iii) Such list shall contain the matters of concern, but shall not contain the names of the listed arbitrators.

(iv) Any party to the proceeding for which the listed arbitrator is being considered may interpose within the 45-day period described in § 251.45(b) an

objection to that arbitrator being selected. If the objection is raised to a matter found to be within the scope of § 251.31, the objection will serve automatically to disqualify the arbitrator. If the objection is raised to a matter found to be outside the scope of § 251.31, the objection will be taken into account when the Librarian makes his or her selection, but will not serve automatically to disqualify the arbitrator.

(c) At such time as the two selected arbitrators choose a third arbitrator, they shall consult with the Librarian to determine if any conflicts of interest exist for the third arbitrator. If, in the opinion of the Librarian of Congress, any conflicts of interest do exist, the two selected arbitrators shall be asked to choose another arbitrator who has no conflict of interest.

(d) Within one week of the selection of the CARP panel, the three selected arbitrators shall file with the Librarian an updated confidential financial disclosure form or, if there are no changes in the arbitrator's financial interests, a statement to that effect. If any conflicts of interest are revealed on the updated form, the Librarian will suspend the proceeding and replace the selected arbitrator with another arbitrator from the arbitrator list in accordance with the provision of § 251.6.

(e) During the following periods of time, the selected arbitrators shall be obliged to inform the Librarian immediately of any change in their financial interests that would reasonably raise a conflict of interest—

(1) During the period beginning with the filing of the updated disclosure form or statement required by paragraph (d) of this section and ending with the submission of the panel's report to the Librarian, and

(2) If the same arbitrator or arbitrators are recalled to serve following a court-ordered remand, during the time the panel is reconvened.

(f) If the Librarian determines that an arbitrator has failed to give timely notice of a financial interest constituting a conflict of interest, or that the arbitrator in fact has a conflict of in-

terest, the Librarian shall remove that arbitrator from the proceeding.

[59 FR 23981, May 9, 1994, as amended at 59 FR 63040, Dec. 7, 1994; 60 FR 8197, Feb. 13, 1995; 61 FR 63717, Dec. 2, 1996]

§ 251.33 Ex parte communications.

(a) *Communications with Librarian or Register.* No person outside the Library of Congress shall engage in ex parte communication with the Librarian of Congress or the Register of Copyrights on the merit or status of any matter, procedural or substantive, relating to the distribution of royalty fees, the adjustment of royalty rates or the status of digital audio recording devices, at any time whatsoever. This prohibition shall not apply to statements concerning public policies related to royalty fee distribution and rate adjustment so long as they are unrelated to the merits of any particular proceeding.

(b) *Selected arbitrators.* No interested person shall engage in, or cause someone else to engage in, ex parte communications with the selected arbitrators in a proceeding for any reason whatsoever from the time of their selection to the time of the submission of their report to the Librarian, and, in the case of a remand, from the time of their reconvening to the time of their submission of their report to the Librarian. Incidental communications unrelated to any proceeding, such as an exchange of pleasantries, shall not be deemed to constitute an ex parte communication.

(c) *Listed arbitrators.* No interested person shall engage in, or cause someone else to engage in, ex parte communications with any person listed by the Librarian of Congress as qualified to serve as an arbitrator about the merits of any past, pending, or future proceeding relating to the distribution of royalty fees or the adjustment of royalty rates. This prohibition applies during any period when the individual appears on a current arbitrator list.

(d) *Library and Copyright Office personnel.* No person outside the Library of Congress (including the Copyright Office staff) shall engage in ex parte communications with any employee of the Library of Congress about the substantive merits of any past, pending, or

future proceeding relating to the distribution of royalty fees or the adjustment of royalty rates. This prohibition does not apply to procedural inquiries such as scheduling, filing requirements, status requests, or requests for public information.

(e) *Outside contacts.* The Librarian of Congress, the Register of Copyrights, the selected arbitrators, the listed arbitrators, and the employees of the Library of Congress described in paragraphs (a) through (d) of this section, shall not initiate or continue the prohibited communications that apply to them.

(f) *Responsibilities of recipients of communication.* (1) Whoever receives a prohibited communication shall immediately end it and place on the public record of the applicable proceeding:

- (i) All such written or recorded communications;
- (ii) Memoranda stating the substance of all such oral communications; and
- (iii) All written responses, and memoranda stating the substance of all oral responses, to the materials described in paragraphs (f)(1) (i) and (ii) of this section.

(2) The materials described in this paragraph (f) shall not be considered part of the record for the purposes of decision unless introduced into evidence by one of the parties.

(g) *Action by Librarian.* When notice of a prohibited communication described in paragraphs (a) through (d) of this section has been placed in the record of a proceeding, either the Librarian of Congress or the CARP may require the party causing the prohibited communication to show cause why his or her claim or interest in the proceeding should not be dismissed, denied, or otherwise adversely affected.

[59 FR 23981, May 9, 1994, as amended at 59 FR 63040, 63041, Dec. 7, 1994; 60 FR 8197, Feb. 13, 1995]

§251.34 Gifts and other things of monetary value.

(a) *Selected arbitrators.* From the time of selection to the time of the submission of the arbitration panel's report, whether during the initial proceeding or during a court-ordered remand, no selected arbitrator shall solicit or accept, directly or indirectly, any gift,

gratuity, favor, travel, entertainment, service, loan, or any other thing of monetary value from a person or organization that has an interest that would be affected by the outcome of the proceeding, regardless of whether the offer was intended to affect the outcome of the proceeding.

(b) *Listed arbitrators.* No listed arbitrator shall solicit or accept, directly or indirectly, any gift, gratuity, favor, travel, entertainment, service, loan, or any other thing of monetary value from a person or organization that has an interest in any proceeding for which the arbitrator might be selected, regardless of whether the offer was intended to affect the outcome of the proceeding, except—

(1) A listed arbitrator may accept unsolicited gifts having an aggregate market value of \$20 or less per occasion, as long as the aggregate market value of individual gifts received from any one source does not exceed \$50 in a calendar year, or

(2) A listed arbitrator may accept a gift given under circumstances in which it is clear that the gift is motivated by a family relationship or personal friendship rather than the potential of the listed arbitrator to decide a future proceeding.

(c) A gift that is solicited or accepted indirectly includes a gift—

(1) Given with the arbitrator's knowledge and acquiescence to the arbitrator's parent, sibling, spouse, child, or dependent relative because of that person's relationship to the arbitrator, or

(2) Given to any other person, including any charitable organization, on the basis of designation, recommendation, or other specification by the arbitrator.

§251.35 Outside employment and other activities.

(a) From the time of selection to the time when all possibility of being selected to serve on a court-ordered remand is ended, no arbitrator shall—

(1) Engage in any outside business or other activity that would cause a reasonable person to question the arbitrator's ability to render an impartial decision;

(2) Accept any speaking engagement, whether paid or unpaid, related to the

proceeding or sponsored by a party that would be affected by the outcome of the proceeding; or

(3) Accept any honorarium, whether directly or indirectly paid, for any appearance, speech, or article related to the proceeding or offered by a party who would be affected by the outcome of the proceeding.

(b) Honoraria indirectly paid include payments—

(1) Given with the arbitrator's knowledge and acquiescence to the arbitrator's parent, sibling, spouse, child, or dependent relative because of that person's relationship to the arbitrator, or

(2) Given to any other person, including any charitable organization, on the basis of designation, recommendation, or other specification by the arbitrator.

§251.36 Pre-arbitration and post-arbitration employment restrictions.

(a) The Librarian of Congress will not select any arbitrator who was employed at any time during the period of five years immediately preceding the date of that arbitrator's selection by any party to, or any person, organization or entity with a financial interest in, the proceeding for which he or she is being considered. However, a listed arbitrator may disclose on the record the past employment causing disqualification and may ask the parties to consider whether to allow him or her to serve in the proceeding, in which case any agreement by the parties to allow the listed arbitrator to serve shall be unanimous and shall be incorporated into the record of the proceeding.

(b) No arbitrator may arrange for future employment with any party to, or any person, organization, or entity with a financial interest in, the proceeding in which he or she is serving.

(c) For a period of three years from the date of submission of the arbitration panel's report to the Librarian, no arbitrator may enter into employment with any party to, or any person, organization, or entity with a financial interest in, the particular proceeding in which he or she served.

(d) For purposes of this section, "employed" or "employment" means any business relationship involving the pro-

vision of personal services including, but not limited to, personal services as an officer, director, employee, agent, attorney, consultant, contractor, general partner or trustee, but does not include serving as an arbitrator, mediator, or neutral engaged in alternative dispute resolution.

§251.37 Use of nonpublic information.

(a) Unless required by law, no arbitrator shall disclose in any manner any information contained in filings, pleadings, or evidence that the arbitration panel has ruled to be confidential in nature.

(b) Unless required by law, no arbitrator shall disclose in any manner—

(1) Intra-panel communications or communications between the Library of Congress and the panel intended to be confidential;

(2) Draft interlocutory rulings or draft decisions; or

(3) The CARP report before its submission to the Librarian of Congress.

(c) No arbitrator shall engage in a financial transaction using nonpublic information, or allow the improper use of nonpublic information, to further his or her private interest or that of another, whether through advice or recommendation, or by knowing unauthorized disclosure.

§251.38 Billing and commitment to standards.

(a) Arbitrators are bound by the hourly or daily fee they proposed to the Librarian of Congress when their names were submitted to be listed under §251.3, and shall not bill in excess of their proposed charges.

(b) Arbitrators shall not charge the parties any expense in addition to their hourly or daily charge, except, in the case of an arbitrator who resides outside the Washington, DC metropolitan area, for travel, lodging, and meals not to exceed the government rate.

(c) When submitting their statement of costs to the parties under §251.54, arbitrators shall include a detailed account of their charges, including the work performed during each hour or day charged.

(d) Except for support services provided by the Library of Congress, arbitrators shall perform their own work,

including research, analysis of the record, and decision-writing.

(e) At the time of selection, arbitrators shall sign an agreement stating that they will abide by all the terms therein, including all of the standards of conduct and billing restrictions specified in this subpart. Any arbitrator who does not sign the agreement will not be selected to serve.

[59 FR 23981, May 9, 1994, as amended at 60 FR 8197, Feb. 13, 1995]

§251.39 Remedies.

In addition to those provided above, remedies for the violation of the standards of conduct of this section may include, but are not limited to, the following—

(a) In the case of a selected arbitrator,

(1) Removal of the arbitrator from the proceeding;

(2) Permanent removal of the arbitrator's name from the current and any future list of available arbitrators published by the Librarian;

(3) Referral of the matter to the bar of which the arbitrator is a member.

(b) In the case of a listed but not selected arbitrator—

(1) Permanent removal of the arbitrator's name from the current and any future list of available arbitrators published by the Librarian;

(2) Referral of the matter to the bar of which the listed arbitrator is a member.

(c) In the case of an interested party or individual who engaged in the ethical violation—

(1) Referral of the matter to the bar or professional association of which the interested individual is a member;

(2) Barring the offending individual from current and/or future appearances before the CARP;

(3) Designation of an issue in the current or in a future proceeding as to whether the party's interest should not be dismissed, denied, or otherwise adversely affected.

(d) In all applicable matters of violations of standards of conduct, the Librarian may refer the matter to the Department of Justice, or other legal authority of competent jurisdiction, for criminal prosecution.

Subpart E—Procedures of Copyright Arbitration Royalty Panels

§251.40 Scope.

This subpart governs the proceedings of Copyright Arbitration Royalty Panels convened under 17 U.S.C. 803 for the adjustment of royalty rates and distribution of royalty fees. This subpart does not apply to other arbitration proceedings specified by 17 U.S.C., or to actions or rulemakings of the Librarian of Congress or the Register of Copyrights, except where expressly provided in the provisions of this subpart.

§251.41 Formal hearings.

(a) The formal hearings that will be conducted under the rules of this subpart are rate adjustment hearings and royalty fee distribution hearings. All parties intending to participate in a hearing of a Copyright Arbitration Royalty Panel must file a notice of their intention. A CARP may also, on its own motion or on the petition of an interested party, hold other proceedings it considers necessary to the exercise of its functions, subject to the provisions of §251.7. All such proceedings will be governed by the rules of this subpart.

(b) During the 45-day period specified in §251.45(b)(1)(i) for distribution proceedings, or during the 45-day period specified in §251.45(b)(2)(i) for rate adjustment proceedings, as appropriate, any party may petition the Librarian of Congress to dispense with formal hearings, and have the CARP decide the controversy or rate adjustment on the basis of written pleadings. The petition may be granted if—

(1) The controversy or rate adjustment, as appropriate, does not involve any genuine issue of material fact; or

(2) All parties to the proceeding agree, in writing, that a grant of the petition is appropriate.

[59 FR 23981, May 9, 1994, as amended at 59 FR 63041, Dec. 7, 1994]

§251.42 Suspension or waiver of rules.

For purposes of an individual proceeding, the provisions of this subpart may be suspended or waived, in whole

or in part, by a Copyright Arbitration Royalty Panel upon a showing of good cause, subject to the provisions of § 251.7. Such suspension or waiver shall apply only to the proceeding of the CARP taking that action, and shall not be binding on any other panel or proceeding. Where procedures have not been specifically prescribed in this subpart, and subject to § 251.7, the panel shall follow procedures consistent with 5 U.S.C. chapter 5, subchapter II.

§ 251.43 Written cases.

(a) All parties who have filed a notice of intent to participate in the hearing shall file written direct cases with the Copyright Office, and with other parties in the manner in which the Librarian of Congress shall direct in accordance with § 251.45(b).

(b) The written direct case shall include all testimony, including each witness's background and qualifications, along with all the exhibits to be presented in the direct case.

(c) Each party may designate a portion of past records, including records of the Copyright Royalty Tribunal, that it wants included in its direct case. Complete testimony of each witness whose testimony is designated (i.e., direct, cross and redirect) must be referenced.

(d) In the case of a royalty fee distribution proceeding, each party must state in the written direct case its percentage or dollar claim to the fund. In the case of a rate adjustment proceeding, each party must state its requested rate. No party will be precluded from revising its claim or its requested rate at any time during the proceeding up to the filing of the proposed findings of fact and conclusions of law.

(e) No evidence, including exhibits, may be submitted in the written direct case without a sponsoring witness, except where the CARP panel has taken official notice, or in the case of incorporation by reference of past records, or for good cause shown.

(f) Written rebuttal cases of the parties shall be filed at a time designated by a CARP upon conclusion of the hearing of the direct case, in the same form and manner as the direct case, except that the claim or the requested

rate shall not have to be included if it has not changed from the direct case.

[59 FR 23981, May 9, 1994, as amended at 59 FR 63041, Dec. 7, 1994; 61 FR 63717, Dec. 2, 1996]

§ 251.44 Filing and service of written cases and pleadings.

(a) *Filing of pleadings.* In a royalty fee distribution proceeding or in a rate adjustment proceeding, the submitting party shall deliver an original and five copies of all filings to the Copyright Office at the address listed in § 251.1, unless otherwise instructed by the Librarian of Congress or the CARP. The Copyright Office will make further distribution to the CARP, as necessary. In no case shall a party tender any written case or pleading by facsimile transmission.

(b) *Exhibits.* All exhibits must be included with a party's case; however, in the case of exhibits whose bulk or whose cost of reproduction would unnecessarily encumber the record or burden the party, the Librarian of Congress or the CARP may reduce the number of required copies. Nevertheless, a complete copy must still be submitted to the Copyright Office.

(c) *English language translations.* In all filings with a CARP or the Librarian of Congress, each submission that is in a language other than English shall be accompanied by an English-language translation, duly verified under oath to be a true translation. Any other party to the proceeding may, in response, submit its own English-language translation, similarly verified.

(d) *Affidavits.* The testimony of each witness in a party's written case, direct or rebuttal, shall be accompanied by an affidavit or a declaration made pursuant to 28 U.S.C. 1746 supporting the testimony.

(e) *Subscription and verification.* (1) The original of all documents filed by any party represented by counsel shall be signed by at least one attorney of record and shall list the attorney's address and telephone number. All copies shall be conformed. Except for English-language translations, written cases, or when otherwise required, documents signed by the attorney for a party need not be verified or accompanied by an

affidavit. The signature of an attorney constitutes certification that to the best of his or her knowledge and belief there is good ground to support the document, and that it has not been interposed for purposes of delay.

(2) The original of all documents filed by a party not represented by counsel shall be signed by that party and list that party's address and telephone number.

(3) The original of a document that is not signed, or is signed with the intent to defeat the purpose of this section, may be stricken as sham and false, and the matter shall proceed as though the document had not been filed.

(f) The Librarian of Congress shall compile and distribute to those parties who have filed a notice of intent to participate, the official service list of the proceeding, which shall be composed of the names and addresses of the representatives of all the parties to the proceeding. In all filings, a copy shall be served upon counsel of all other parties identified in the service list, or, if the party is unrepresented by counsel, upon the party itself. Proof of service shall accompany the filing. Parties shall notify the Librarian of any change in the name or address to which service shall be made, and shall serve a copy of such notification on all parties and the CARP.

(g) *Oppositions and replies.* Except as otherwise provided in this part or by the Librarian of Congress or a CARP, oppositions to motions shall be filed within seven business days of the filing of the motion, and replies to oppositions shall be filed within five business days of the filing of the opposition. Each party must serve all motions, petitions, objections, oppositions, and replies on the other parties or their counsel by means no slower than overnight express mail on the same day the pleading is filed.

[59 FR 23981, May 9, 1994, as amended at 60 FR 8197, Feb. 13, 1995; 61 FR 63717, Dec. 2, 1996]

§ 251.45 Discovery and prehearing motions.

(a) *Request for comment, notice of intention to participate.* In the case of a royalty fee distribution proceeding, the Librarian of Congress shall, after the

time period for filing claims, publish in the FEDERAL REGISTER a notice requesting each claimant on the claimant list to negotiate with each other a settlement of their differences, and to comment by a date certain as to the existence of controversies with respect to the royalty funds described in the notice. Such notice shall also establish a date certain by which parties wishing to participate in the proceeding must file with the Librarian a notice of intention to participate. In the case of a rate adjustment proceeding, the Librarian of Congress shall, after receiving a petition for rate adjustment filed under § 251.62, or, in the case of non-commercial educational broadcasting and satellite carrier, prior to the commencement of proceedings, publish in the FEDERAL REGISTER a notice requesting interested parties to comment on the petition for rate adjustment. Such notice shall also establish a date certain by which parties wishing to participate in the proceeding must file with the Librarian a notice of intention to participate.

(b) *Precontroversy discovery, filing of written cases, scheduling.* (1)(i) In the case of a royalty fee distribution proceeding, the Librarian of Congress shall, after the filing of comments and notices described in paragraph (a) of this section, designate a 45-day period for precontroversy discovery and exchange of documents. The period will begin with the exchange of written direct cases among the parties to the proceeding. Each party to the proceeding must effect actual delivery of a complete copy of its written direct case on each of the other parties to the proceeding no later than the first day of the 45-day period. At any time during the 45-day period, any party to the proceeding may file with the Librarian prehearing motions and objections, including petitions to dispense with formal hearings under § 251.41(b) and objections to arbitrators appearing on the arbitrator list under § 251.4. Responses to motions, petitions, and objections must be filed with the Librarian within seven business days from the filing of such motions, petitions,

and objections. Replies to the responses shall be filed within five business days from the filing of such responses with the Librarian. Each party must serve all motions, petitions, objections, oppositions, and replies on the other parties or their counsel by means no slower than overnight express mail on the same day the pleading is filed.

(ii) Subject to §251.72, the Librarian shall establish, prior to the commencement of the 45-day period, the date on which arbitration proceedings will be initiated.

(2)(i) In the case of a rate adjustment proceeding, the Librarian of Congress shall, after the filing of comments and notices described in paragraph (a) of this section, designate a 45-day period for precontroversy discovery and exchange of documents. The period will begin with the exchange of written direct cases among the parties to the proceeding. Each party to the proceeding must effect actual delivery of a complete copy of its written direct case on each of the other parties to the proceeding no later than the first day of the 45-day period. At any time during the 45-day period, any party to the proceeding may file with the Librarian prehearing motions and objections, including petitions to dispense with formal hearings under §251.41(b) and objections to arbitrators appearing on the arbitrator list under §251.4. Responses to motions, petitions, and objections must be filed with the Librarian within seven business days from the filing of such motions, petitions, and objections. Replies to the responses shall be filed within five business days from the filing of such responses with the Librarian. Each party must serve all motions, petitions, objections, oppositions, and replies on the other parties or their counsel by means no slower than overnight express mail on the same day the pleading is filed.

(ii) Subject to §251.64, the Librarian shall establish, prior to the commencement of the 45-day period, the date on which arbitration proceedings will be initiated.

(c) *Discovery and motions filed with a Copyright Arbitration Royalty Panel.* (1) A Copyright Arbitration Royalty Panel shall designate a period following the filing of written direct and rebuttal

cases with it in which parties may request of an opposing party nonprivileged underlying documents related to the written exhibits and testimony.

(2) After the filing of written cases with a CARP, any party may file with a CARP objections to any portion of another party's written case on any proper ground including, without limitation, relevance, competency, and failure to provide underlying documents. If an objection is apparent from the face of a written case, that objection must be raised or the party may thereafter be precluded from raising such an objection.

(d) *Amended filings and discovery.* In the case of objections filed with either the Librarian of Congress or a CARP, each party may amend its claim, petition, written case, or direct evidence to respond to the objections raised by other parties, or to the requests of either the Librarian or a panel. Such amendments must be properly filed with the Librarian or the CARP, wherever appropriate, and exchanged with all parties. All parties shall be given a reasonable opportunity to conduct discovery on the amended filings.

[59 FR 23981, May 9, 1994, as amended at 59 FR 63041, Dec. 7, 1994; 61 FR 63718, Dec. 2, 1996]

§251.46 Conduct of hearings: Role of arbitrators.

(a) At the opening of a hearing conducted by a Copyright Arbitration Royalty Panel, the chairperson shall announce the subject under consideration.

(b) Only the arbitrators of a CARP, or counsel as provided in this chapter, shall question witnesses.

(c) Subject to the vote of the CARP, the chairperson shall have responsibility for:

(1) Setting the order of presentation of evidence and appearance of witnesses;

(2) Administering oaths and affirmations to all witnesses;

(3) Announcing the CARP panel's ruling on objections and motions and all rulings with respect to introducing or excluding documentary or other evidence. In all cases, whether there are an even or odd number of arbitrators

sitting at the hearing, it takes a majority vote to grant a motion or sustain an objection. A split vote will result in the denial of the motion or the overruling of the objection;

(4) Regulating the course of the proceedings and the decorum of the parties and their counsel, and insuring that the proceedings are fair and impartial; and

(5) Announcing the schedule of subsequent hearings.

(d) Each arbitrator may examine any witness or call upon any party for the production of additional evidence at any time. Further examination, cross-examination, or redirect examination by counsel relevant to the inquiry initiated by an arbitrator may be allowed by a CARP panel, but only to the limited extent that it is directly responsive to the inquiry of the arbitrator.

§ 251.47 Conduct of hearings: Witnesses and counsel.

(a) With all due regard for the convenience of the witnesses, proceedings shall be conducted as expeditiously as possible.

(b) In each distribution or rate adjustment proceeding, each party may present its opening statement with the presentation of its direct case.

(c) All witnesses shall be required to take an oath or affirmation before testifying; however, attorneys who do not appear as witnesses shall not be required to do so.

(d) Witnesses shall first be examined by their attorney and by opposing attorneys for their competency to support their written testimony and exhibits (*voir dire*).

(e) Witnesses may then summarize, highlight or read their testimony. However, witnesses may not materially supplement or alter their written testimony except to correct it, unless the CARP panel expands the witness's testimony to complete the record.

(f) Parties are entitled to raise objections to evidence on any proper ground during the course of the hearing, including an objection that an opposing party has not furnished nonprivileged underlying documents. However, they may not raise objections that were apparent from the face of a written case and could have been raised before the

hearing without leave from the CARP panel. See § 251.45(c).

(g) All written testimony and exhibits will be received into the record, except any to which the panel sustains an objection; no separate motion will be required.

(h) If the panel rejects or excludes testimony and an offer of proof is made, the offer of proof shall consist of a statement of the substance of the evidence which it is contended would have been adduced. In the case of documentary or written evidence, a copy of such evidence shall be marked for identification and shall constitute the offer of proof.

(i) The CARP panel shall discourage the presentation of cumulative evidence, and may limit the number of witnesses that may be heard on behalf of any one party on any one issue.

(j) Parties are entitled to conduct cross-examination and redirect examination. Cross-examination is limited to matters raised on direct examination. Redirect examination is limited to matters raised on cross-examination. The panel, however, may limit cross-examination and redirect examination if in its judgment this evidence or examination would be cumulative or cause undue delay. Conversely, this subsection does not restrict the discretion of the panel to expand the scope of cross-examination or redirect examination.

(k) Documents that have not been exchanged in advance may be shown to a witness on cross-examination. However, copies of such documents must be distributed to the CARP panel and to other participants or their counsel at hearing before being shown to the witness at the time of cross-examination, unless the panel directs otherwise. If the document is not, or will not be, supported by a witness for the cross-examining party, that document can be used solely to impeach the witness's direct testimony and cannot itself be relied upon in findings of fact as rebutting the witness's direct testimony. However, upon leave from the panel, the document may be admitted as evidence without a sponsoring witness if official notice is proper, or if, in the panel's view, the cross-examined witness is the proper sponsoring witness.

(l) A CARP will encourage individuals or groups with the same or similar interests in a proceeding to select a single representative to conduct their examination and cross-examination of any given witness. However, if there is no agreement on the selection of a representative, each individual or group will be allowed to conduct its own examination and cross-examination of any given witness, but only on issues affecting its particular interests, provided that the questioning is not repetitious or cumulative of the questioning of other parties within the group.

[59 FR 23981, May 9, 1994, as amended at 59 FR 63041, Dec. 7, 1994]

§ 251.48 Rules of evidence.

(a) *Admissibility.* In any public hearing before a Copyright Arbitration Royalty Panel, evidence that is not unduly repetitious or cumulative and is relevant and material shall be admissible. The testimony of any witness will not be considered evidence in a proceeding unless the witness has been sworn.

(b) *Documentary evidence.* Evidence that is submitted in the form of documents or detailed data and information shall be presented as exhibits. Relevant and material matter embraced in a document containing other matter not material or relevant or not intended as evidence must be plainly designated as the matter offered in evidence, and the immaterial or irrelevant parts shall be marked clearly so as to show they are not intended as evidence. In cases where a document in which material and relevant matter occurs is of such bulk that it would unnecessarily encumber the record, it may be marked for identification and the relevant and material parts, once properly authenticated, may be read into the record. If the CARP panel desires, a true copy of the material and relevant matter may be presented in extract form, and submitted as evidence. Anyone presenting documents as evidence must present copies to all other participants at the hearing or their attorneys, and afford them an opportunity to examine the documents in their entirety and offer into evidence any other portion that may be considered material and relevant.

(c) *Documents filed with a Copyright Arbitration Royalty Panel or Copyright Office.* If the matter offered in evidence is contained in documents already on file with a Copyright Arbitration Royalty Panel or the Copyright Office, the documents themselves need not be produced, but may instead be referred to according to how they have been filed.

(d) *Public documents.* If a public document such as an official report, decision, opinion, or published scientific or economic data, is offered in evidence either in whole or in part, and if the document has been issued by an Executive Department, a legislative agency or committee, or a Federal administrative agency (Government-owned corporations included), and is proved by the party offering it to be reasonably available to the public, the document need not be produced physically, but may be offered instead by identifying the document and signaling the relevant parts.

(e) *Introduction of studies and analyses.* If studies or analyses are offered in evidence, they shall state clearly the study plan, all relevant assumptions, the techniques of data collection, and the techniques of estimation and testing. The facts and judgments upon which conclusions are based shall be stated clearly, together with any alternative courses of action considered. If requested, tabulations of input data shall be made available to the Copyright Arbitration Royalty Panel.

(f) *Statistical studies.* Statistical studies offered in evidence shall be accompanied by a summary of their assumptions, their study plans, and their procedures. Supplementary details shall be included in appendices. For each of the following types of statistical studies the following should be furnished:

(1) *Sample surveys.* (i) A clear description of the survey design, the definition of the universe under consideration, the sampling frame and units, the validity and confidence limits on major estimates; and

(ii) An explanation of the method of selecting the sample and of the characteristics which were measured and counted.

(2) *Econometric investigations.* (i) A complete description of the econometric model, the reasons for each assumption, and the reasons for the statistical specification;

(ii) A clear statement of how any changes in the assumptions might affect the final result; and

(iii) Any available alternative studies that employ alternative models and variables, if requested.

(3) *Experimental analysis.* (i) A complete description of the design, the controlled conditions, and the implementation of controls; and

(ii) A complete description of the methods of observation and adjustment of observation.

(4) *Studies involving statistical methodology.* (i) The formula used for statistical estimates;

(ii) The standard error for each component;

(iii) The test statistics, the description of how the tests were conducted, related computations, computer programs, and all final results; and

(iv) Summarized descriptions of input data and, if requested, the input data themselves.

[59 FR 23981, May 9, 1994, as amended at 60 FR 8197, Feb. 13, 1995]

§ 251.49 Transcript and record.

(a) An official reporter for the recording and transcribing of hearings shall be designated by the Librarian of Congress. Anyone wishing to inspect or copy the transcript of a hearing may do so at a location specified by the chairperson of the Copyright Arbitration Royalty Panel conducting the hearing.

(b) The transcript of testimony and all exhibits, papers, and requests filed in the proceeding, shall constitute the official written record. Such record shall accompany the report of the determination of the CARP to the Librarian of Congress required by 17 U.S.C. 802(e).

(c) The record, including the report of the determination of a CARP, shall be available at the Copyright Office for public inspection and copying in accordance with § 251.22.

§ 251.50 Rulings and orders.

In accordance with 5 U.S.C., subchapter II, a Copyright Arbitration Royalty Panel may issue rulings or orders, either on its own motion or that of an interested party, necessary to the resolution of issues contained in the proceeding before it; Provided, that no such rules or orders shall amend, supplement or supersede the rules and regulations contained in this subchapter. See § 251.7.

[59 FR 23981, May 9, 1994, as amended at 60 FR 8197, Feb. 13, 1995]

§ 251.51 Closing the record.

To close the record of hearing, the chairperson of a Copyright Arbitration Royalty Panel shall make an announcement that the taking of testimony has concluded. In its discretion the panel may close the record as of a future specified date, and allow time for exhibits yet to be prepared to be admitted, provided that the parties to the proceeding stipulate on the record that they waive the opportunity to cross-examine or present evidence with respect to such exhibits. The record in any hearing that has been recessed may not be closed by the chairperson before the day on which the hearing is to resume, except upon ten days' notice to all parties.

[59 FR 23981, May 9, 1994, as amended at 59 FR 63041, Dec. 7, 1994]

§ 251.52 Proposed findings and conclusions.

(a) Any party to the proceeding may file proposed findings of fact and conclusions, briefs, or memoranda of law, or may be directed by the chairperson to do so. Such filings, and any replies to them, shall take place at such time after the record has been closed as the chairperson directs.

(b) Failure to file when directed to do so shall be considered a waiver of the right to participate further in the proceeding, unless good cause for the failure is shown.

(c) Proposed findings of fact shall be numbered by paragraph and include all basic evidentiary facts developed on the record used to support proposed conclusions, and shall contain appropriate citations to the record for each

evidentiary fact. Proposed findings submitted by someone other than a party in a proceeding shall be restricted to those issues specifically affecting that person.

(d) Proposed conclusions shall be stated separately.

[59 FR 23981, May 9, 1994, as amended at 59 FR 63041, Dec. 7, 1994; 60 FR 8197, Feb. 13, 1995]

§251.53 Report to the Librarian of Congress.

(a) At any time after the filing of proposed findings of fact and conclusions of law and any replies thereto specified in §251.52, and not later than 180 days from publication in the FEDERAL REGISTER of notification of commencement of the proceeding, a Copyright Arbitration Royalty Panel shall deliver to the Librarian of Congress a report incorporating its written determination. Such determination shall be accompanied by the written record, and shall set forth the facts that the panel found relevant to its determination.

(b) The determination of the panel shall be certified by the chairperson and signed by all of the arbitrators. Any dissenting opinion shall be certified and signed by the arbitrator so dissenting.

(c) At the same time as the submission to the Librarian of Congress, the chairperson of the panel shall cause a copy of the determination to be delivered to all parties participating in the proceeding.

(d) The Librarian of Congress shall make the report of the CARP and the accompanying record available for public inspection and copying.

[59 FR 23981, May 9, 1994, as amended at 59 FR 63041, Dec. 7, 1994]

§251.54 Assessment of costs of arbitration panels.

(a) The panel may assess its ordinary and necessary costs, according to §251.38, to the participants to the proceeding as follows:

(1) In the case of a rate adjustment proceeding, the parties to the proceeding shall bear the entire cost thereof in such manner and proportion as the panel shall direct.

(2) In the case of a royalty distribution proceeding, the parties to the proceeding shall bear the total cost of the proceeding in direct proportion to their share of the distribution.

(3) In the case of a change in the share of distribution because of the Librarian's substitution of a new determination, or a determination reached as a result of a court-ordered remand, the parties shall make restitution to each other for the difference in payments that resulted from the change.

(b) The chairperson of the panel shall cause to be delivered to each participating party a statement of the total costs of the proceeding, the party's share of the total cost, and the amount owed by the party to each arbitrator.

(c) All parties to a proceeding shall have 30 days from receipt of the statement of costs and bill for payment in which to tender payment to the arbitrators. Payment should be in the form of a money order, check, or bank draft.

[59 FR 23981, May 9, 1994, as amended at 59 FR 63042, Dec. 7, 1994]

§251.55 Post-panel motions.

(a) Any party to the proceeding may file with the Librarian of Congress a petition to modify or set aside the determination of a Copyright Arbitration Royalty Panel within 14 days of the Librarian's receipt of the panel's report of its determination. Such petition shall state the reasons for modification or reversal of the panel's determination, and shall include applicable sections of the party's proposed findings of fact and conclusions of law.

(b) Replies to petitions to modify or set aside shall be filed within 14 days of the filing of such petitions.

§251.56 Order of the Librarian of Congress.

(a) After the filing of post-panel motions, see §251.55, but within 60 days from receipt of the report of the determination of a panel, the Librarian of Congress shall issue an order accepting the panel's determination or substituting the Librarian's own determination. The Librarian shall adopt the determination of the panel unless he or she finds that the determination is arbitrary or contrary to the applicable provisions of 17 U.S.C.

(b) If the Librarian substitutes his or her own determination, the order shall set forth the reasons for not accepting the panel's determination, and shall set forth the facts which the Librarian found relevant to his or her determination.

(c) The Librarian shall cause a copy of the order to be delivered to all parties participating in the proceeding. The Librarian shall also publish the order, and the determination of the panel, in the FEDERAL REGISTER.

§251.57 Effective date of order.

An order of determination issued by the Librarian under §251.56 shall become effective 30 days following its publication in the FEDERAL REGISTER, unless an appeal has been filed pursuant to §251.58 and notice of the appeal has been served on all parties to the proceeding.

§251.58 Judicial review.

(a) Any order of determination issued by the Librarian of Congress under §251.55 may be appealed, by any aggrieved party who would be bound by the determination, to the United States Court of Appeals for the District of Columbia Circuit, within 30 days after publication of the order in the FEDERAL REGISTER.

(b) If no appeal is brought within the 30 day period, the order of determination of the Librarian is final, and shall take effect as set forth in the order.

(c) The pendency of any appeal shall not relieve persons obligated to make royalty payments under 17 U.S.C. 111, 114, 115, 116, 118, 119, or 1003, and who would be affected by the determination on appeal, from depositing statements of account and royalty fees by those sections.

[59 FR 23981, May 9, 1994, as amended at 61 FR 37215, July 17, 1996]

Subpart F—Rate Adjustment Proceedings

§251.60 Scope.

This subpart governs only those proceedings dealing with royalty rate adjustments affecting cable (17 U.S.C. 111), subscription digital audio transmission (17 U.S.C. 114), the manufac-

ture and distribution of phonorecords, including digital phonorecord deliveries (17 U.S.C. 115), performances on coin-operated phonorecord players (jukeboxes) (17 U.S.C. 116), noncommercial educational broadcasting (17 U.S.C. 118) and satellite carriers (17 U.S.C. 119). Those provisions of subpart E of this part generally regulating the conduct of proceedings shall apply to rate adjustment proceedings, unless they are inconsistent with the specific provisions of this subpart.

[59 FR 23981, May 9, 1994, as amended at 59 FR 63042, Dec. 7, 1994; 61 FR 37215, July 17, 1996]

§251.61 Commencement of adjustment proceedings.

(a) In the case of cable, subscription digital audio transmissions, phonorecords, digital phonorecord deliveries, and coin-operated phonorecord players (jukeboxes), rate adjustment proceedings shall commence with the filing of a petition by an interested party according to the following schedule:

(1) Cable: During 1995, and each subsequent fifth calendar year.

(2) Subscription Digital Audio Transmissions: During a 60-day period prescribed by the Librarian in 1996, 2000, and each subsequent fifth calendar year.

(3) Phonorecords: During 1997 and each subsequent tenth calendar year.

(4) Digital Phonorecord Deliveries: During 1997 and each subsequent fifth calendar year except to the extent that different years may be determined by the parties to a negotiated settlement or by the copyright arbitration royalty panel.

(5) Coin-operated phonorecord players (jukeboxes): Within one year of the expiration or termination of a negotiated license authorized by 17 U.S.C. 116.

(b) Cable rate adjustment proceedings may also be commenced by the filing of a petition, according to 17 U.S.C. 801(b)(2)(B) and (C), if the Federal Communications Commission amends certain of its rules with respect to the carriage by cable systems of broadcast signals, or with respect to syndicated and sports programming exclusivity.

(c) In the case of noncommercial educational broadcasting, a petition is not necessary for the commencement of proceedings. Proceedings commence with the publication of a notice of the initiation of arbitration proceedings in the FEDERAL REGISTER on June 30, 1997, and at five year intervals thereafter.

(d) In the case of the satellite carrier compulsory license, rate adjustment proceedings shall commence on January 1, 1997, in accordance with 17 U.S.C. 119(c)(3)(A), for satellite carriers who are not parties to a voluntary agreement filed with the Copyright Office in accordance with 17 U.S.C. 119(c)(2).

[59 FR 23981, May 9, 1994, as amended at 59 FR 63042, Dec. 7, 1994; 61 FR 37215, July 17, 1996]

§ 251.62 Content of petition.

(a) In the case of a petition for rate adjustment proceedings for cable, subscription digital audio transmissions, phonorecords, digital phonorecord deliveries, and coin-operated phonorecord players (jukeboxes), the petition shall detail the petitioner's interest in the royalty rate sufficiently to permit the Librarian of Congress to determine whether the petitioner has a "significant interest" in the matter. The petition must also identify the extent to which the petitioner's interest is shared by other owners or users; owners or users with similar interests may file a petition jointly.

(b) In the case of a petition for rate adjustment proceedings as the result of a Federal Communications Commission rule change, the petition shall also set forth the actions of the Federal Communications Commission on which the petition for a rate adjustment is based.

[59 FR 23981, May 9, 1994, as amended at 61 FR 37216, July 17, 1996]

§ 251.63 Consideration of petition; settlements.

(a) To allow time for the parties to settle their differences concerning cable, phonorecord, and jukebox rate adjustments, the Librarian of Congress shall, after the filing of the petition under § 251.62 and before the 45-day period specified in § 251.45(b)(2)(i), designate a 30-day period for negotiation of a settlement. The Librarian shall

cause notice of the dates for that period to be published in the FEDERAL REGISTER.

(b) In the case of a settlement among the parties to a proceeding, the Librarian may, upon the request of the parties, submit the agreed upon rate to the public in a notice-and-comment proceeding. The Librarian may adopt the rate embodied in the proposed settlement without convening an arbitration panel, provided that no opposing comment is received by the Librarian from a party with an intent to participate in a CARP proceeding.

[59 FR 63042, Dec. 7, 1994, as amended at 61 FR 37216, July 17, 1996; 61 FR 63718, Dec. 2, 1996]

§ 251.64 Disposition of petition; initiation of arbitration proceeding.

After the end of the 45-day precontroversy discovery period, and after the Librarian has ruled on all motions and objections filed under § 251.45, the Librarian will determine the sufficiency of the petition, including, where appropriate, whether one or more of the petitioners' interests are "significant." If the Librarian determines that a petition is significant, he or she will cause to be published in the FEDERAL REGISTER a declaration of a controversy accompanied by a notice of initiation of an arbitration proceeding. The same declaration and notice of initiation shall be made for noncommercial educational broadcasting and the satellite carrier compulsory license in accordance with 17 U.S.C. 118 and 119, respectively.

[59 FR 23981, May 9, 1994, as amended at 59 FR 63042, Dec. 7, 1994]

§ 251.65 Deduction of costs of rate adjustment proceedings.

In accordance with 17 U.S.C. 802(h)(1), the Librarian of Congress and the Register of Copyrights may assess the reasonable costs incurred by the Library of Congress and the Copyright Office as a result of the rate adjustment proceedings directly to the parties participating in the proceedings.

[59 FR 63042, Dec. 7, 1994]

Subpart G—Royalty Fee Distribution Proceedings

§251.70 Scope.

This subpart governs only those proceedings dealing with distribution of royalty payments deposited with the Register of Copyrights for cable (17 U.S.C. 111), satellite carrier (17 U.S.C. 119), and digital audio recording devices and media (17 U.S.C. chapter 10). Those provisions of subpart E generally regulating the conduct of proceedings shall apply to royalty fee distribution proceedings, unless they are inconsistent with the specific provisions of this subpart.

§251.71 Commencement of proceedings.

(a) *Cable*. In the case of royalty fees collected under the cable compulsory license (17 U.S.C. 111), any person claiming to be entitled to such fees must file a claim with the Copyright Office during the month of July each year in accordance with the requirements of this subchapter.

(b) *Satellite carriers*. In the case of royalty fees collected under the satellite carrier compulsory license (17 U.S.C. 119), any person claiming to be entitled to such fees must file a claim with the Copyright Office during the month of July each year in accordance with the requirements of this subchapter.

(c) *Digital audio recording devices and media*. In the case of royalty payments for the importation and distribution in the United States, or the manufacture and distribution in the United States, of any digital recording device or medium, any person claiming to be entitled to such payments must file a claim with the Copyright Office during the month of January or February each year in accordance with the requirements of this subchapter.

§251.72 Declaration of controversy: Initiation of arbitration proceeding.

If the Librarian determines that a controversy exists among the claimants to either cable, satellite carrier, or digital audio recording devices and media royalties, the Librarian shall publish in the FEDERAL REGISTER a declaration of controversy along with a

notice of initiation of an arbitration proceeding. Such notice shall, to the extent feasible, describe the nature, general structure and schedule of the proceeding.

[59 FR 23981, May 9, 1994. Redesignated at 59 FR 63042, Dec. 7, 1994]

§251.73 Deduction of costs of distribution proceedings.

The Librarian of Congress and the Register of Copyrights may, before any distributions of royalty fees are made, deduct the reasonable costs incurred by the Library of Congress and the Copyright Office as a result of the distribution proceeding, from the relevant royalty pool.

[59 FR 23981, May 9, 1994. Redesignated at 59 FR 63042, Dec. 7, 1994]

PART 252—FILING OF CLAIMS TO CABLE ROYALTY FEES

Sec.

252.1 Scope.

252.2 Time of filing.

252.3 Content of claims.

252.4 Compliance with statutory dates.

252.5 Copies of claims.

AUTHORITY: 17 U.S.C. 111(d)(4), 801, 803.

SOURCE: 59 FR 23992, May 9, 1994, unless otherwise noted.

§252.1 Scope.

This part prescribes procedures under 17 U.S.C. 111(d)(4)(A), whereby parties claiming to be entitled to cable compulsory license royalty fees shall file claims with the Copyright Office.

[59 FR 23992, May 9, 1994, as amended at 60 FR 8198, Feb. 13, 1995]

§252.2 Time of filing.

During the month of July each year, any party claiming to be entitled to cable compulsory license royalty fees for secondary transmissions of one or more of its works during the preceding calendar year shall file a claim to such fees with the Copyright Office. No royalty fees shall be distributed to a party for secondary transmissions during the specified period unless such party has timely filed a claim to such fees. Claimants may file claims jointly or as a single claim.